IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal (Lodging) No.533 of 2006
in
Suit No.3081 of 1988

The Khatau Makanji & Co Ltd. **..Appellants**

vs

The Khatau Makanji Spinning and Weaving Co Ltd. ..Respondents

Mr. P.K. Samdani with Mr. B. Colabawala with Jayesh Patil and Agaz Bilawala instructed by Bilawala & Co for the appellants.

Mr.D.D.Madon, Senior Advocate with Ms Geeanjali Prabhu instructed by Vigil Juris for the respondents

CORAM: KSHITIJ R. VYAS, C.J., &
ABHAY S. OKA,J.

DATE: JULY 5, 2006.

P.C.:-

This appeal is directed against an order dated 22nd June, 2006 passed in Suit No.3081 of 1988 whereby the learned single Judge did not allow the appellants- defendants to tender written statement and directed the respondents-plaintiffs to adduce evidence in support of their case. The learned counsel for the appellants submitted that the day on which the order was passed, the written statement was in fact ready and was to be affirmed on the same day afternoon but before the appellants could do so the impugned order came to be passed. The

learned counsel for the respondents, while opposing the appeal, submitted that no such request was made before the learned single Judge.

Having gone through the impugned order it is clear that the appellants have failed to file the written statement in a suit of 1988, and therefore, the impugned order cannot be faulted with. Howeer, considering the fact that the written statement was in fact ready on the date when the order was passed, with a view to see to it that the case of the appellants is not prejudied, we give one chance to the appellants to defend the suit. In view of this, the appeal is partly allowed. The order dated 22nd June, 2006 is modifed to the extent that the appellants are allowed to file the written statement within two weeks from today on condition that the appellants shall pay cost quantified at Rs.25,000/- to the respondents within one week from today. The respondents shall file all original documentrs on which they wish to rely upon and file affidavits of the witnesses in lieu of the examination in chief on or before 7th August, 2006.

CHIEF JUSTICE

ABHAY S. OKA, J.